

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

FORTINO SANCHEZ,

Petitioner,

vs.

STATE OF NEVADA,

Respondent.

3:13-cv-00415-RCJ-VPC

ORDER

This action was transferred to this Court by the Ninth Circuit Court of Appeals. ECF No. 1. Petitioner Fortino Sanchez has submitted a document entitled petition for a writ of habeas corpus. He has not paid the filing fee nor filed an application to proceed *in forma pauperis*.

When the filing fee is not prepaid, under 28 U.S.C. § 1915(a)(2) and Local Rule LSR 1-2, petitioner must apply for leave to proceed *in forma pauperis*. The petitioner must attach both an inmate account statement for the past six months and a properly executed financial certificate. Petitioner has not submitted any fee or documentation. Without the complete printout showing daily account activity over the full six-month period, the Court is unable to assess whether the current balance on the financial certificate is representative of petitioner's ability to pay. The Court is unable to see, *inter alia*, the regularity and amount of any incoming funds as well as the extent to which petitioner is making discretionary expenditures that instead could be applied to payment of the filing fee.

Petitioner further did not use the Court's required habeas petition form to state his claims. Under Local Rule LSR 3-1, a petitioner must file the petition on the Court's required Section 2254 petition form. In the present case, petitioner in essence used the petition form as a cover document for a several

1 page motion for new counsel in his on-going state court proceedings. It appears from the state of these  
2 documents that petitioner is confused about the process and purpose of a federal habeas action.

3 Due to the multiple defects presented, the pauper application will be denied, and the present  
4 action will be dismissed without prejudice to the filing of a new petition in a new action with a pauper  
5 application with all required attachments. It does not appear from the papers presented that a dismissal  
6 without prejudice would result in a promptly-filed new petition being untimely. In this regard, petitioner  
7 at all times remains responsible for calculating the running of the federal limitation period as applied  
8 to his case, properly commencing a timely-filed federal habeas action, and properly exhausting his  
9 claims in the state courts.

10 **IT THEREFORE IS ORDERED** that this action shall be **DISMISSED** without prejudice to  
11 the filing of a new petition in a new action with a properly completed pauper application with all new  
12 – and complete – financial attachments.

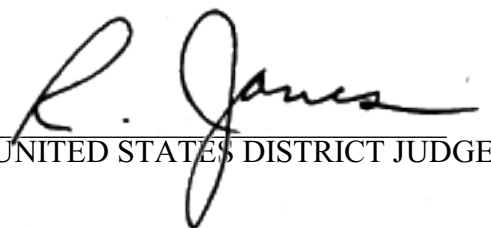
13 **IT FURTHER IS ORDERED** that all pending motions are **DENIED** without prejudice.

14 **IT FURTHER IS ORDERED** that a certificate of appealability is **DENIED**. Reasonable jurists  
15 would not find the dismissal of the improperly-commenced action without prejudice to be debatable or  
16 wrong.

17 The Clerk shall send petitioner two copies each of an application form to proceed in forma  
18 pauperis for incarcerated persons and a noncapital Section 2254 habeas petition form, one copy of the  
19 instructions for each form, and a copy of the papers that he submitted.

20 The Clerk shall enter final judgment accordingly, dismissing this action without prejudice.

21 DATED: This 16<sup>th</sup> day of September, 2013.

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24 UNITED STATES DISTRICT JUDGE  
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